

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of)
)
ZONA MYERS, PALMDALE WATER) **ORDER NO. WQ 97-01**
DISTRICT, AND ROSAMOND)
COMMUNITY SERVICES DISTRICT)
)
For Review of General Waste)
Discharge Requirements Order)
No. 6-95-100 of the California)
Regional Water Quality Control)
Board, Lahontan Region. Our File)
Nos. A-998, A-998(a), and A-998(b).)

BY THE BOARD:

On September 14, 1995, the Lahontan Regional Water Quality Control Board (RWQCB) adopted Order No. 6-95-100 (Lahontan order) establishing "general waste discharge requirements for the land application of biosolids." These biosolids, more commonly known as sewage sludge, are authorized for application to agricultural crops. Compliance with the California Environmental Quality Act (CEQA) consisted of the adoption of a mitigated negative declaration. Some opposition to the Lahontan order was expressed both in writing and at the hearing. Some argued that the proposed requirements were too stringent; others argued that they were too lenient. The RWQCB received no comments about the adequacy of its CEQA document after it was circulated, either in writing or at the hearing.

Timely petitions were received from one individual and two public agencies. Ms. Myers submitted written comments and appeared at the public hearing; neither Palmdale Water District nor Rosamond Community Services District participated in any way

until after the waste discharge requirements had been adopted. Among other contentions, all three petitions object to the use of a negative declaration for the adoption of the waste discharge requirements.

I. BACKGROUND

On April 18, 1996, this Board issued Order No. WQ 96-08 involving petitions from the Central Delta Water Agency, the South Delta Water Agency, and the California Farm Bureau Federation objecting to similar general waste discharge requirements from the Central Valley Regional Water Quality Control Board. That order (Central Valley order) relied on a negative declaration for CEQA compliance. It was remanded for the preparation of an environmental impact report (EIR) before a general permit for sludge application could be reissued. The record in that case was extensive and the opposition presented considerable expert argument in support of the contention that the spreading of sewage sludge on farm land was fraught with problems. While an even larger body of expert opinion was presented in support of the Central Valley order, CEQA requires that an EIR be prepared if there is serious public controversy or if there is a disagreement among experts over the significance of an effect on the environment.

In the case of the Lahontan order, the Board members were not presented any expert opinion, except from their staff, on the environmental effects of spreading sewage sludge on agricultural land. However, the record does contain materials

from the hearing before the Central Valley Regional Board including the tape recording of the entire proceeding. At that hearing, 23 people testified, 17 in favor of the requirements, six in opposition. The testimony on both sides made reference to scientific studies supporting the speaker's position. This Board can take notice of the entire record of the Central Valley Regional Board, including the expert opinions presented, and hereby does so.

II. CONTENTION AND FINDINGS¹

Contention: The RWQCB did not comply with CEQA in adopting the Lahontan order.

Response: The RWQCB should prepare an EIR before adopting the general waste discharge requirements. While the Lahontan order is not the same as the Central Valley order (it is clear that the RWQCB sought to avoid some of the specific criticisms directed at the Central Valley order), many of the concerns expressed by the experts in the record of the Central Valley order should be taken into account in determining the appropriate CEQA document for general permits. When combined with significant public controversy, this requires an EIR. This Board therefore exercises its authority to require the preparation of an EIR before any more sewage sludge is discharged under Lahontan's general permit.

¹ Petitioners have raised other issues concerning the merits of the Lahontan order. In light of our decision on the CEQA contention, it is unnecessary to consider those at this time.

Not only can issues be more fully addressed and mitigation more thoroughly weighed in an EIR, the lead agency can determine that the social benefits outweigh any unavoidable environmental harm and the project can go forward. If, in the final analysis, some of the specific environmental concerns cannot be eliminated, that finding of overriding consideration may ultimately be needed. For such a balancing of social and environmental values, a negative declaration is inadequate both as a matter of law and as a matter of public policy.² An EIR is a better mechanism.

III. CONCLUSION

An EIR must be prepared before the approval of general waste discharge requirements for the land application of biosolids.

V. ORDER

For the reasons expressed in Order No. WQ 96-08 and above, this matter is remanded to the RWQCB for further action. No further discharges will be permitted under the general waste discharge requirements issued by the RWQCB. The preparation of an EIR will be necessary to proceed with adoption of general waste discharge requirements to apply sewage sludge. The outstanding permits are rescinded, with the exception of the single permit under which sludge has already been applied. That

² Nothing in the order should be read to preclude the issuance of site specific waste discharge requirements. In many cases, a negative declaration may be the appropriate environmental document for such requirements.

permit will remain in effect, but only for the purpose of enforcing post-application requirements.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 23, 1997.

AYE: John P. Caffrey
 Marc Del Piero
 James M. Stubchaer
 Mary Jane Forster

NO: None.

ABSENT: John W. Brown

ABSTAIN: None.

/s/Maureen Marché
Maureen Marché
Administrative Assistant to the Board